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Supreme Court of the United States

No. 515

ATLANTIC COAST LINE RAILROAD COMPANY
et al., Petitioners,

versus

G. B. JENNINGS, Administratrix of the Estate of
LUTHER W. CARTER, *Respondent*

REPLY BRIEF OF PETITIONER.

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REPLY BRIEF OF PETITIONER.

The respondent, in his brief has made two principal points:

(1) That evidence introduced at the trial below was sufficient to show reckless and conscious failure on the part of the defendants to give the statutory signals at the crossing at which this collision occurred.

(2) That the points now raised in this court by petitioner were not raised in the court below.

The Evidence Introduced at the Trial Below Was Not Sufficient to Show Wilfulness, Wantonness or Conscious Failure on the Part of the Defendant, Petitioner Herein.

Respondent states at Page 4 of his brief that the allegations of negligence which are sufficient to sustain punitive damages will be found at Pages 7 through 10 of the record. These allegations are briefly that the defendant was negligent in (a) failing to keep the engine under proper control, (b) operating the train at a high, dangerous and unlawful speed, (c) operating the train at a dangerous and excessive speed over a

much traveled highway without giving sign or signal of the train's approach, (d) in failing to give proper warning, (e) in failing to give signals required by statute, (f) in failing to properly inspect and maintain the signal or the signal lights, (g) in failing to have the signal lights operating, (h) in maintaining unsafe and dangerous crossing, because of the obstructions to the view of an approaching train, (i) in that the crossing did not have any warning devices or a flagman, (j) in failing to have the signal lights operating, (k) in failing to maintain a flagman to warn the public, (l) in allowing obstructions to remain in close proximity to the crossing, (m) in holding out to the traveling public that it had signal and blinker lights at the crossing, (n) in allowing plaintiff's intestate to rely thereon, whereas the signal or blinker light failed to function, and in operating the train without sufficient headlights, (o) in failing to keep a proper lookout, (p) in operating the train in a careless, reckless, wilful, wanton and unlawful manner and with a reckless and wanton disregard of the safety and lives of travelers using said highway.

It will be seen that these allegations are reduced to four simple points: (1) That the speed of the train was too high, (2) that the warning devices present at the crossing either were ineffective, or did not properly operate, (3) that there was a failure to give any signal from the train itself by the ringing of the bell or the blowing of the whistle, and (4) that obstructions were maintained near the crossing which prevented travelers on the highway from seeing the approaching train. It is quite plain that none of these allegations cover a conscious or deliberate default, nor is there anything in them which tends to show any such conscious default. All of them relate only to matters of simple negligence.

The petitioners have covered in their brief the evidence introduced in support of these allegations; but we invite the attention of the court to Page 10 of the respondent's brief, where it appears quite plainly that the principal argument of respondent to show wilful and reckless conduct is the fact that the flasher lights did not begin to operate until the train was practically on the crossing. Respondent says:

> "* * * It is submitted that the construction of the flash lights by the defendant company so as to beckon a traveler on, and then run into him with no warning whatsoever from the revolving 'STOP' sign (R. 97) and only the first warning from the 'RED' danger flash lights, when the train is already on the highway (R. 40) is itself positive action (sic) by the Railroad Company of willful and reckless conduct."

The track on which the Railroad Company's train was operating at the time of the collision was not one of its main line tracks. Instead it was a pass track, where operations are slow, principally switching, and where there is none of the high speed operations found on the main line tracks. It appears from Pages 108 and 109 of the record that there was a definite reason for setting the contact points close to the crossing as indicated by the following extract from the record:

> "Q. And of course there is no reason why you could not have set this one back 150 or 200 or 300 feet on that switch?
>
> A. Yes, there is a definite reason why.
>
> Q. Why, what is the reason?
>
> A. That is a storage track and switch and slow speed track. The contact point of any crossing sig-

> nal is determined by the speed of the fastest train that operates over that crossing, and this particular track is a side track and it is impossible for a high speed train to operate over it." (R. 108, 109.)

This testimony was uncontradicted, but respondent would now have this court believe that the flasher lights were so set that high speed trains operated over this crossing with inadequate notice to the public of their approach. There was no evidence to show this to be a fact, and the uncontradicted evidence shows that the operation was on a pass or switching track, where only slow trains are operated, and where the risk to the traveling public is comparatively small. Petitioner again submits that there is no evidence here of recklessness, wantonness, or conscious failure on the part of the petitioner.

The Points Raised in This Court Were Properly Raised in the Court Below.

In the petitioners' brief, filed in the Supreme Court of South Carolina, at Page 2, which set out the questions involved in the appeal to that court, question No. 4 was as follows:

> "Did the circuit judge err in refusing appellant's motion for a directed verdict as to punitive damages based upon insufficiency of proof of their alleged wilfulness, wantonness or recklessness and was such refusal tantamount to a deprivation of appellant's property without due process of law and a denial to them of the equal protection of the laws in violation of the 14th amendment to the constitution of the United States."

It is respectfully submitted that the point was specifically preserved in the question presented to the Su-

preme Court of South Carolina. Furthermore in its supplement to its petition for rehearing petitioner submitted the following in its brief at Page 280:

> "The court apparently overlooked and failed to pass definitely upon appellant's ninth exception (Tr. F. 926-928) which was as follows:
>
> 'The circuit judge was in error in overruling defendant's motion for a directed verdict as to punitive damages, and in submitting to the jury defendant's alleged liability for punitive damages, in that the testimony was wholly insufficient to justify a finding that the defendants or either of them, wilfully, wantonly or recklessly failed the performance of any duty owing to paintiff's intestate, and the submission of defendant's alleged liability for punitive damages to the jury under such circumstances was tantamount to depriving defendants of their property without due process of law and denying to them the equal protection of the laws in violation of the 14th amendment to the constitution of the United States.'
>
> "It is respectfully submitted that this exception should have been sustained for the reasons therein stated. Viewing it in the most unfavorable light from the standpoint of the defendants, the most that could possibly be said is that the evidence makes out a case of simple negligence only, and for such negligence the jury has awarded plaintiff $70,000.00. To permit upon the evidence recovery of punitive damages in addition is equivalent of the assessment of such damages without evidence, thereby denying appellants the fair trial and due process of law to which they are entitled under the 14th amendment to the constitution of the United States."

As is conceded at Page 21 of respondent's brief herein, where respondent says: "Our Supreme Court saw

fit to entertain such supplemental petition and considered the question herein raised, which was then actually presented for the first time to the State Supreme Court," the Supreme Court of South Carolina has considered and passed upon the question here raised, and has decided the question in a manner which petitioner respectfully submits is in violation of the 14th amendment.

It is submitted to the court that evidence of simple negligence has been permitted to sustain a recovery of punitive damages for wilful, reckless and wanton conduct, in support of which no evidence whatever was introduced at the trial, and the petitioners again pray this court to review that decision of the Supreme Court of South Carolina.

Respectfully submitted,

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